

VOTE EXPLANATION

Ms. HEITKAMP. Mr. President, I was necessarily absent for yesterday's vote on the motion to invoke cloture on the nomination of Robert McKinnon Califf to be Commissioner of Food and Drugs, Department of Health and Human Services, so I could attend the funeral service for Police Officer Jason Moszer with the city of Fargo, ND, who lost his life in the line of duty.

Had I been present, I would have voted yea on the motion.

NOMINATION OBJECTION

Mr. LANKFORD. Mr. President, we have witnessed in this administration Executive overreach with increasing boldness. One manifestation of Executive overreach is the shocking indifference with which departmental agencies spurn the congressionally mandated rulemaking processes in favor of regulating under the guise of "guidance documents." Guidance documents in their proper form advise the public of their obligations under existing law and, therefore, merely interpret the law without imposing any additional obligation. Agencies are quick to echo that guidance documents do not have the force and effect of law; yet governmentwide, agencies increasingly have used guidance as an end-run around the rulemaking process in violation of Federal law.

The Department of Education's Office for Civil Rights is such an offender. Their guidance documents, including Dear Colleague letters on harassment and bullying, issued October 23, 2010, and sexual violence, issued April 4, 2011, purport to merely interpret title IX of the Education Amendments of 1972, yet advance troublesome policies not contemplated by the text of title IX or its implementing regulations.

I appreciate the fact that these guidance documents predated Mr. King's service at the Department of Education, and I do not assert that he had any role in developing or issuing the letters. However, in a letter dated January 7, 2016, I asked him to clarify his role as Acting Secretary, in no uncertain terms, that the policies expounded in the 2010 and 2011 letters not required by the terms of title IX cannot be grounds for any adverse action.

To my disappointment, his response failed to do so. Mr. King should commit to use the office of the Secretary to rein in the regulatory abuses within the Department of Education and encourage his Cabinet counterparts to do the same. Until such time as such commitments are made, I intend to object to his nomination.

REMEMBERING JUSTICE ANTONIN SCALIA

Mr. ENZI. Mr. President, I wish to offer a few words remembering Associate Justice Antonin Scalia of the Supreme Court. America has lost a legal

giant and tireless defender of the Constitution. Justice Scalia dedicated his life to his country and the rule of law. His passing is a significant loss for the Court and the United States.

Few Associate Justices of the Supreme Court capture the attention of both lawyers and non-lawyers like Justice Scalia has throughout his career. Antonin Scalia used wit, humor, and colorful writing to captivate Americans in his judicial opinions and educational talks. Justice Scalia also felt strongly about protecting the rights of the individual and did so in monumental opinions interpreting the First, Second, Fourth, and Sixth Amendments. In the immediate days following his passing, I received substantial correspondence from Wyoming residents praising his work for upholding the Constitution and defending individual liberties.

A number of my colleagues have already mentioned how Justice Scalia would always put the Constitution first, even if it conflicted with his personal views. This was the case when Justice Scalia voted to uphold the right of protesters to burn the American flag—even though he strongly disagreed with flag desecration.

When it comes to privacy, Justice Scalia established himself as a leading champion of the Fourth Amendment, particularly when it comes to privacy in one's home or car.

Justice Scalia also authored a landmark majority opinion upholding gun rights under the Second Amendment which reiterated the constitutional right of an individual to keep and bear arms in the District of Columbia, a right which was later incorporated to all States.

Justice Scalia also fought ardently for religious freedoms under the Establishment Clause and joined others in upholding freedom of association under the First Amendment.

From his earliest days on the Supreme Court, Scalia approached the Constitution and statutes passed by Congress as a textualist. He protected the vertical separation of power in our federalist system which keeps decisions closer to the people and fought for the separation of powers amongst the three branches of Federal Government.

Most recently, Justice Scalia challenged Executive overreach in the unanimous decision of the Supreme Court invalidating President Obama's unconstitutional recess appointments to the National Labor Relations Board and the Consumer Financial Protection Bureau.

Finally, Justice Scalia's writings, judicial philosophy, and lectures have influenced future generations of lawyers and jurists. Whether, during oral argument, asking if the government can "make people buy broccoli" or referencing Cole Porter lyrics in opinions, Scalia used words to rebut, challenge, and persuade.

Justice Scalia's legacy and legal precedents will stand the test of time,

and our Nation owes him a debt of gratitude for his service. My wife, Diana, and I send our prayers and condolences to the Scalia family.

40TH ANNIVERSARY OF THE CONGRESSIONAL BLACK CAUCUS FOUNDATION AND 45TH ANNIVERSARY OF THE CONGRESSIONAL BLACK CAUCUS

Mr. BOOKER. Mr. President, today I wish to honor the 40th anniversary of the Congressional Black Caucus Foundation, Incorporated, CBCF. It is fitting that during the month we celebrate Black history, we commemorate the decades of service CBCF has rendered to the Nation by advancing policy issues that impact the global Black community.

Black History Month is an ideal time to reflect on the ways the law has shaped the African-American experience. Our Nation has come a long way since the time when schools were segregated by law. No longer does the law bar African Americans from the voting booth. Today we have African-American Members of Congress who help craft the law; Yet the important work of civil rights remains unfinished.

Since 1976, CBCF has been a critical partner with Congress in the fight for equal rights. As a nonpartisan nonprofit institute dedicated to eliminating racial disparities, CBCF has served as an inspiration to not just African Americans, but to people across the globe. However, its legacy and impact have been far from symbolic.

From helping to make the birthday of Dr. Martin Luther King, Jr., a Federal holiday, to rebuilding communities impacted by Hurricane Katrina, to working on major legislation like the Elementary and Secondary Education Act, to building a virtual library project to shed a spotlight on the work of Black-elected officials, CBCF has stood alongside African-American elected leaders on some of the most critical policy issues of our time.

As we move in 2016, the work of CBCF is more important than ever. Today people of color face disparities in the areas of criminal justice reform, voting rights, and economic development both at home and abroad. Its founders—Nira Hardon Long, Albert Nellum, and Congresswoman Yvonne Burke—envisioned CBCF as an important contributor in the quest for racial equality.

The need remains. The vision lives on. And we have more work to do. I am confident CBCF will continue to serve our country admirably and protect African Americans vigorously. I salute CBCF for their service and celebrate their 40th anniversary.

This year also marks the 45th anniversary of the founding of the Congressional Black Caucus, CBC. I express my appreciation to the 13 founding members of the CBC in 1971 and the 17 members of the CBC class of 1976 for paving the way for African-American Members of Congress, like me, to follow in their